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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LISA TURNER et al., Plaintiffs and Appellants, v. THE RULE COMPANY et al., Defendants and Respondents.	B248667, B250084, B261032 (Los Angeles County Super. Ct. No. BC463850)
LISA TURNER et al., Plaintiffs and Appellants, v. HARTFORD CASUALTY INSURANCE COMPANY, Defendant and Appellant; THE RULE COMPANY et al., Defendants and Respondents.	B256763 (Los Angeles County Super. Ct. No. BC463850)

CONSOLIDATED APPEALS from judgments and orders of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed.

Law Offices of Amy P. Lee and Amy P. Lee for Plaintiffs and Appellants Marian Turner and Lisa Turner.

Law Offices of Nina R. Ringgold and Nina R. Ringgold for Plaintiff and Appellant Cornelius Turner.

Cozen O'Connor, Gilcrist & Rutter, Frank Gooch III and Carolyn Alifragis, for Defendant and Respondent The Rule Company, Inc.

Smith♦Ellison, Michael W. Ellison and Susan L. Goodkin, for Respondent Craig Ponci and Cross-Appellant Hartford Casualty Insurance Company.

Soltman, Levitt, Flaherty & Wattles and Philip E. Black for Defendant and Respondent Thornhill & Associates, Inc.

INTRODUCTION

On July 24, 2008, plaintiff and appellant Lisa Turner (LTurner) was seriously injured in a fall in the shower of the Los Angeles home owned by her parents, plaintiffs and appellants Marian Turner (MTurner) and Cornelius Turner (CTurner).[1] The shower stall glass was not tempered, and the lacerations required the amputation of one arm.

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[1] Appellants refer to themselves individually as LTurner, MTurner, and CTurner, and we will maintain these designations. We refer to appellants collectively as the Turners.

LTurner's sister, Dorian Turner, was also an owner of the home and for a time was a defendant in the federal litigation. She is not a party to these proceedings.

The litigation arising out of LTurner's accident and pre- and post-accident insurance coverage issues has spanned many years and gone back and forth between the federal and state court systems, as well as up and down the appellate ladders in both. The Turners sued a number of parties. A final judgment was entered on April 25, 2016; every defendant prevailed.

In these consolidated appeals, we dismiss several purported appeals taken from nonappealable orders and affirm the following: monetary discovery sanctions payable to respondent The Rule Company (Rule); judgments in favor of Rule, Craig Ponci, and Thornhill & Associates, Inc. (Thornhill); and the postjudgment order awarding Rule costs as the prevailing party. We also grant Rule's motion for sanctions for a frivolous appeal in case number B256763. (Cal. Rules of Court, rule 8.276). We assess sanctions jointly and severally against counsel for appellants, the Law Offices of Nina R. Ringgold and Nina R. Ringgold, the Law Offices of Amy P. Lee and Amy P. Lee, in the sum of $21,366; payable to Rule, and in the additional sum of $8,500, payable to the clerk of this court.

These matters were argued and submitted for decision on May 10, 2019. On June 13, 2019, counsel for CTurner advised this court that her client had died; she requested a stay pending appointment of a personal representative. To date, no notice of appointment has been received. As these appeals were already under submission, however, a stay is not required. Pursuant to this court's inherent power, and because there is no prejudice to any party, this opinion is deemed filed nunc pro tunc, effective May 13, 2019. (See *McPike v. Heaton* (1900) 131 Cal. 109, 111.) For the purpose of all post-appeal matters, time shall run from July 10, 2019.

PROCEDURAL OVERVIEW

I. Federal Lawsuits

This litigation began in federal court. Because one of appellants' jurisdictional challenges to state court proceedings is based on orders and decisions made in the federal forum, we outline the federal proceedings in some detail. Our sources for these facts include petitions for extraordinary relief filed by appellants in this court, an unpublished opinion in LTurner's state court personal injury action (*Turner v. Turner* (Sept. 19, 2013, B241264) [nonpub. opn.] (*Turner I*)), various orders in the United States District Court, and an unpublished per curiam opinion by the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) (*In re Hartford Litigation Cases* (2016) 642 Fed.Appx. 733):

On July 22, 2010, Californian LTurner sued her father, Mississippian CTurner, for personal injuries in the United States District Court for the Central District of California. LTurner soon added her mother and sister, also residents of Mississippi, as defendants.

CTurner initiated a third party complaint against Hartford Casualty Company, his homeowner's insurer; Craig Ponci, Hartford claims adjuster; Rule, the independent insurance broker that arranged for coverage through Hartford; Rule employees Nadja Silletto, Norma Pierson, Tony Gaitan, and Elaine Albrecht; Thornhill & Associates, Inc., the insurance adjusting company retained by Rule to investigate LTurner's claim; and Western

Surety Company.[2] Together, LTurner and MTurner filed their own third party complaint against the same third party defendants.

The two third party complaints initially asserted only state law claims; the federal court characterized "the primary dispute" as whether the third party defendants were required to provide insurance coverage for LTurner's accident. The federal court accepted pendent jurisdiction over both third party complaints.

In April 2011, LTurner presented the federal district court with a stipulation for entry of judgment against MTurner in the amount of $4.1 million and a dismissal of the complaint against Dorian Turner. The proposed judgment did not address LTurner's allegations against her father, however; and the federal trial judge declined to sign it. Third party defendants Hartford and Ponci also objected, contending the proposed stipulated judgment was collusive and not reasonable.

In reviewing the stipulation, the federal trial judge noted the third party complaints alleged state law claims against California entities and individuals and involved "complex issues that [were] far from being resolved." Although the personal injury suit was based on diversity jurisdiction, the pendent claims were not; and they appeared to "substantially predominate" over the personal injury allegations. The federal trial judge scheduled a hearing to determine whether the parties should be realigned and the entire matter dismissed for lack of diversity jurisdiction.

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[2] It is not clear from the record, but it appears Western Surety Company was the Turners' homeowner's insurance carrier before Hartford. Western is not a party to these proceedings.

In response, the Turners filed an amended third party complaint that added federal discrimination causes of action. On May 19, 2011, the federal district court realigned the parties and dismissed LTurner's personal injury action without prejudice to her filing a state court personal injury lawsuit. (*Turner I, supra,* B241265, at p. 4.)

The two third party complaints were consolidated under one case number and remained in federal court. Appellants then voluntarily dismissed the federal claims. With only state claims remaining, the federal court dismissed the consolidated third party complaint on November 10, 2011, also without prejudice to the Turners' pursuing the claims in state court. This order momentarily ended litigation in the federal district court.

II. State Court Litigation

Meanwhile, appellants already had begun filing lawsuits in the Los Angeles County Superior Court. On June 17, 2011, while the federal third party complaints were still pending, CTurner filed a similar action here, against the same defendants, alleging state and federal claims (*Turner v. Hartford,* Super. Ct. Los Angeles County, 2011, No. BC463639). Three days later, on June 20, 2011, two new state court actions were filed: LTurner sued for her personal injuries (*Turner v. Turner,* Super. Ct. Los Angeles County, 2011, No. BC463103) and all three Turners initiated this lawsuit (*Turner v. Hartford*, Super. Ct. Los Angeles County, 2011, No. BC463850), which mirrored the state claims in the still pending federal third party complaints, as well as the CTurner complaint filed three days earlier. Rule removed only the CTurner lawsuit (case no. BC463639) to federal court.

On December 6, 2011, one month after the federal court dismissed the consolidated third party complaint, the Turners filed a first amended complaint (FAC) in this action. Two other events occurred the same day: LTurner and MTurner initiated yet another lawsuit against the same defendants based on the same allegations as in this action (*Turner v. Hartford*, Super. Ct. Los Angeles County, 2011, No. BC474698), and CTurner voluntarily dismissed without prejudice his lawsuit that had been removed to federal court (case no. BC263639). After CTurner voluntarily dismissed his individual state court complaint, notices of related cases were filed in the trial court.[3]

LTurner soon proposed to resolve her state court personal injury action on the same terms she presented to the federal

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[3] The notices of related cases complied with rule 3.300(a) of the California Rules of Court: "A pending civil case is related to another pending civil case, or to a civil case that was dismissed with or without prejudice . . . if the cases: [¶] (1) Involve the same parties and are based on the same or similar claims; [¶] (2) Arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact." All state court actions were assigned to one department

Appellants maintain this case is really "two cases [that] remain separate and were consolidated for pre-trial proceedings while the cases were pending in the United States District Court." The Turners have not explained this statement or why they filed three separate state court actions, in addition to the personal injury lawsuit, other than to suggest the federal judge ordered them to do so. But the United States District Court made no such order; it did no more than dismiss the federal actions without prejudice to appellants' initiating a state court action. (See fn. 5.)

district court. By ex parte application, a superior court judge signed the $4.1 million stipulated judgment the federal court previously rejected. Hartford moved to vacate the stipulated judgment, but the superior court denied the motion.[4]

The FAC in this action included 19 causes of action against eight defendants[5]: Hartford and its claims adjuster Ponci; Rule and Rule employees Silletto, Pierson, Gaitan, and Albrecht; and Thornhill. This pleading was more than 100 pages long and contained 469 paragraphs. There were two distinct aspects to the lawsuit: The Turners alleged racial discrimination, bad faith, and various torts as a result of (1) conduct that predated the Hartford homeowner's policy; (2) the issuance, annual renewals,

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[4] Our colleagues in Division Three reversed this ruling, reviving LTurner's personal injury action. (*Turner I, supra,* B241265) [nonpub. opn.].)

[5] Appellants' appendix does not include the original complaint in this action. The Turners filed a second "first amended complaint" in this case on June 22, 2012. The trial court struck this pleading on June 29, 2012, the date of the hearing on defendants' demurrers to the FAC.

The caption page for the stricken pleading differed from the earlier first amended complaint; it read, "First Amended Complaint Following Consolidation Order of United States District Court for the Central District." This statement, although accurate, is a bit misleading. The federal judge consolidated the separate third party complaints and ordered the filing of a single consolidated third party complaint in that forum. The federal consolidated complaint was subsequently dismissed without prejudice to appellants initiating a state court action. The federal judge never ordered the filing of a consolidated lawsuit in state court.

and eventual nonrenewal of the Hartford policy; and (3) the investigation of LTurner's accident.

Specifically, the FAC alleged MTurner and CTurner purchased the property in 1989. Rule and Silletto provided insurance brokerage services for the Turners from the time they purchased the home. In October 2004, Siletto and Rule "changed insurance carriers for the property to Hartford." At some point, not specified, Rule advised MTurner and CTurner that they were being overcharged for the Hartford policy.

As noted, LTurner's accident occurred on July 24, 2008. Grace Farrell reported the accident to Rule on August 13, 2008.[6] Farrell also provided Ponci with LTurner's medical records.

For her part, MTurner alleged she "assigned all rights and interest in [her] claims and causes of action of any possible nature, past and future, against [Hartford, Rule, Thornhill] . . . any individual, and/or any third party that are transferrable by law to LTurner." Most of the post-accident allegations concerned conduct by Hartford, Rule, and Rule employees. Very few allegations involved Ponci or Thornhill. Ponci was alleged to have written a letter to MTurner and CTurner "falsely claiming that LTurner presented a claim to Hartford on August 13, 2008." Thornhill was alleged to have been retained and "used" by Rule. Thornhill staff photographed LTurner and her home, even though Thornhill knew "[LTurner] had not signed a claimant designation and there was not then a claim pending."

Defendants demurred to the FAC. The demurrers were sustained without leave to amend as to six causes of action and with leave to amend as to the remaining causes of action.

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[6] The pleading does not explain Farrell's relationship to the Turners.

The Turners filed a true second amended complaint (SAC) in this action on August 1, 2012. (See fn. 5.) Defendants again demurred. This time the trial court sustained the demurrers without leave to amend as to all causes of action against Ponci and Thornhill, and the trial court ordered the dismissal of those parties. Appellants appealed (case no. B248667).

Demurrers by Hartford, Rule, and Silletto to the causes of action in the SAC for mistake, reformation, broker negligence, breach of contract, and breach of the covenant of good faith and fair dealing were sustained with leave to amend. The Turners filed a third amended complaint against those parties.[7] The third amended complaint remained the operative pleading until judgments were entered in defendants' favor. Appellants appealed from these judgments (case nos. B252461, B256763, B268792).

As vigorous as the pleading challenges were, they were secondary to the discovery clashes that began soon after the litigation moved to state court. On June 17, 2013, the trial court denied appellants' request for a protective order; granted Rule's discovery motions to compel further responses, without objection, to form and special interrogatories, a request to produce documents, and requests for admission; granted in part and denied in part Rule's motion to compel plaintiffs to attend their depositions; and assessed $6,304.31 in joint and several monetary

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[7] Appellants purported to add Ponci and Thornhill as defendants in three of the third amended complaint's causes of action. The effort was for naught, as the trial court had already sustained their demurrers to the SAC without leave to amend and signed orders dismissing these two respondents with prejudice.

sanctions against appellants and their counsel. Appellants filed a notice of appeal challenging each of these orders (case no. B250084).

Appellants failed to comply with the discovery orders. Instead, they filed a number of petitions for extraordinary relief in this court. Rule eventually moved for terminating sanctions. Hartford filed a request for joinder.

Before Rule's motion could be heard, appellants removed the lawsuit to federal court. The federal district court remanded this action; appellants unsuccessfully appealed from that order (*In re Hartford Litigation Cases, supra,* 642 Fed.Appx. at p.733). The Turners also sought to disqualify the trial judge (§ 170.1). In support of the statement of disqualification, CTurner submitted a declaration stating he was a defendant in this action. The trial judge struck the statement of disqualification. Appellants challenged this order with another petition for extraordinary relief (§ 170.3, subd. (d)), which this court (case no. B255209), the California Supreme Court (case no. S271912), and the United States Supreme Court (case no. 14-224) summarily denied.

The trial court granted the motion and dismissed the litigation against Rule as a terminating sanction for not obeying the earlier discovery orders. The trial court denied Hartford's request for joinder. Appellants and Hartford appealed (case no. B256763).

As the prevailing party, Rule sought costs. Appellants filed a motion to strike or tax costs. On October 27, 2014, the trial court awarded Rule $8,171.55 in costs. Appellants appealed from this order (case no. B261032).

The final judgment in this matter was entered April 25, 2016. Appellants filed a notice of appeal (case no. B278508).

On our own motion, we ordered the appeals in case numbers B248667, B250084, B256763, B261032, and B268792 consolidated for the purposes of oral argument and decision.

III. Dismissed Appeals

A number of the Turners' appeals already have been dismissed. They are as follows:

A. Case number B252461

In this appeal, the Turners challenged the order dismissing Rule employees Silletto, Pierson, Gaitan, and Albrecht. Appellants failed to file a civil case information statement, and we dismissed the appeal. We denied appellants' motion for relief from default; the remittitur issued.

B. Case number B261032 (partial dismissal)

Appellants filed two notices of appeal under this case number.[8] In the second, filed January 20, 2015, appellants claimed the trial court erred on November 19, 2014, when it sustained demurrers to the Turners' cross-complaint, which duplicated in many respects allegations in the FAC and SAC that previously had been dismissed. We dismissed that appeal on March 23, 2015, after appellants failed to designate the record on appeal.

The dismissal order provided that any request to reinstate the appeal must be made by motion filed within 15 days. No such

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[8] The first notice of appeal, filed December 29, 2014, challenged the October 27, 2014 denial of appellants' motion to strike or tax costs claimed by Rule. That appeal is active, and we address it in part VI of the Discussion, *post*.

motion was filed within that time frame; the remittitur issued May 27, 2015.

Almost a year later, appellants moved to recall the remittitur for that portion of the appeal based on the order sustaining defense demurrers to the Turner cross-complaint. We denied the motion on May 17, 2016.

Nonetheless, in their opening brief in case number B261032, appellants belatedly insist they filed the form designating the record for the second appeal. We granted appellants' request for judicial notice of a series of documents related to this dismissed appeal. Exhibits 5 and 6 establish that appellants designated the record only for the first notice of appeal.

C. Case number B268792

This appeal challenged the summary judgment in Hartford's favor. It was included in our consolidation order, but subsequently dismissed on September 8, 2016, based on appellants' failure to file an opening brief. We denied appellants' motion to reinstate the appeal; the remittitur issued.

D. Case number B278508

Here, the Turners appealed from the final judgment entered April 25, 2016, as well as all interim orders. The appeal was dismissed for appellants' failure to file an opening brief. The remittitur issued on September 14, 2017.

DISCUSSION

I. This Court Is Without Jurisdiction to Entertain Purported Appeals from Nonappealable Orders

"An appealable judgment or order is essential to appellate jurisdiction." (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 (*Art Movers*).) "[W]e are dutybound to consider" appealability on our own motion. (*Olson v. Cory* (1983) 35 Cal.3d 390, 398.) When an appeal encompasses appealable and nonappealable orders, we must dismiss the notice of appeal from the nonappealable order. (*Martin v. Johnson* (1979) 88 Cal.App.3d 595, 608.)

We begin our analysis with Code of Civil Procedure sections 904.1 and 906.[9] Section 904.1 "codifies the 'one final judgment rule . . . [which] is based on the theory that piecemeal appeals are oppressive and costly, and that optimal appellate review is achieved by allowing appeals only after the entire action is resolved in the trial court." (*Art Movers, supra,* 3 Cal.App.4th at p. 645.) On appeal from a final judgment, section 906 authorizes reviewing courts to review "any intermediate ruling . . . which involves the merits or necessarily affects the judgment." The optimal efficiency of these two provisions is easily lost when multiple parties have been sued and their liabilities–or not–are determined at different stages of the litigation, frequently after a number of pivotal interim rulings.

This lawsuit presents one such example. Four appeals have already been dismissed in their entirety, and one appeal has been partially dismissed. Four consolidated appeals remain (case

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[9] All undesignated statutory references are to the Code of Civil Procedure.

nos. B248667, B250084, B256763, B261032). Nevertheless, we do not have jurisdiction over every order challenged in the appeals. We asked the parties to file supplemental briefs to address appealability. (Gov. Code, § 68081.)

A. No Appeal Lies from Issuance of the Discovery Order and Denial of A Protective Order (case no. B250084)

On June 17, 2013, fairly early in the state court proceedings, the trial court made three rulings adverse to appellants and in favor of Rule. First, it denied appellants' motion for a discovery stay/protective order; second, it granted many of Rule's discovery motions; and third, it imposed monetary discovery sanctions of $6,304.31, jointly and severally against appellants and their attorneys.

Only the monetary sanctions order is appealable. (§ 904.1, subd. (a)(11), (12); *Rail-Transport Employees Assn. v. Union Pacific Motor Freight* (1996) 46 Cal.App.4th 469, 475.) We consider the merits of the sanctions award in part IV of the Discussion, *post*. The purported appeals from the two nonappealable orders must be dismissed.

The order compelling appellants to respond to discovery is not appealable.[10] (*Montano v. Wet Seal Retail, Inc.* (2015)

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[10] Appellants did file a petition for extraordinary relief in this court to contest the discovery order (case no. B249850). This court summarily denied the petition, as did the California Supreme Court (case no. S212280) and the United States Supreme Court (case no. 13-605).

7 Cal.App.5th 1248, 1259 ["There is no statutory provision for appeal of an order compelling discovery"].) Although the discovery order would have been reviewable on appeal from the final judgment (*Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal.3d 161, 169; § 906), that appeal (case no. B278508) was dismissed after appellants did not file an opening brief.[11] The purported appeal from the discovery order must be dismissed as having been taken from a nonappealable order. (*Montano*, at p 1260.)

The denial of appellants' motion for a protective order also is not appealable; review of that order is available solely by way of a petition for writ relief. (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1421 (*Dodge, Warren*).) Appellants filed such a petition, and this court summarily denied it on July 11, 2013 (case no. B249850).

In their opening brief, appellants seek to establish appealability by arguing the request for a protective order was actually a request for a mandatory injunction that, once denied and appealed, stayed the entire action and divested the trial court of jurisdiction to proceed. (§ 904.1, subd. (a)(6).) The argument is belied by the record (see, e.g., appellants' petition for writ relief (B249850), where they describe the request as one for a protective order, not an injunction) and is not supported by any applicable authority.

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[11] To the extent the discovery order was reviewable from the judgment entered in Rule's favor after the trial court granted the motion for terminating sanctions, the Turners forfeited the issue by failing to brief it. (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125.)

Appellants did not respond to our request for supplemental briefing on the appealability question. Rule asserted the protective order is not reviewable on appeal. For the reasons that follow, we agree the purported appeal from the denial of appellants' request for a protective order also must be dismissed as having been taken from a nonappealable order.

1. Background

Appellants first asked the trial court, by ex parte application filed May 25, 2012, to stay this action and issue a protective order to shield them from responding to discovery propounded by Rule. The request was denied without prejudice to the filing of a noticed motion. Appellants noticed that motion, specifically asking for "a stay of the requirement to respond to discovery prejudicial to its position in" LTurner's personal injury action and for a protective order and the development of "a coordinated discovery plan." Appellants' proposed order sought a stay and protective order, but not injunctive relief. The trial court concluded appellants did not satisfy their burden for issuance of a protective order and denied the request without prejudice.

Six months later, still not having responded to discovery, appellants renewed their motion for a discovery protective order, a temporary stay pending approval of a discovery coordination plan and completion of LTurner's personal injury action, and sanctions authorized by discovery statutes. The caption page for the motion did not request injunctive relief. The motion recited that a proposed order granting a protective order and temporary stay and awarding sanctions under the discovery statutes was attached. This summary of the proposed order did not include

injunctive relief, and the proposed order itself was not included in appellants' appendix.

At a reported hearing on June 4, 2012, CTurner's counsel stressed the need for a protective order to insulate appellants from discovery while LTurner's personal injury action against her father was pending. Counsel did not ask the trial court to issue an injunction, but she sought a stay of any order granting Rule's discovery motions. The trial court responded that any stay should come from the Court of Appeal. The trial court again denied the request for a protective order and stay, noting the motion presented the "exact same legal and factual arguments [appellants previously presented and sought] the exact same forms of relief."

2. Analysis

As appellants assert, appealability depends on the substance and effect of an order, not its label. (*Daugherty v. City and County of San Francisco* (2018) 24 Cal.App.5th 928, 942.) Here, there is no disconnect between the substance and effect of the trial court's order and its label. Appellants' request in the trial court was for issuance of a protective order and stay. The notice of motion did not seek injunctive relief, counsel did not argue for that remedy, and the appellate record does not include any document that could support the issuance of an injunction (e.g., a verified complaint or declaration demonstrating sufficient grounds; see also § 657). Appellants' writ petition to this court sought redress for denial of the request for a protective order, not injunctive relief (case no. B249850).

The belated bid to recast a straightforward protective order motion as an application for injunctive relief–specifically, a

mandatory injunction–came after a series of setbacks and additional adverse rulings in the trial court. It fails. (*Dodge, Warren, supra,* 105 Cal.App.4th at p. 1421 ["denial of a protective order is not appealable"]; see also *Scottsdale Ins. Co. v. Superior Court* (1997) 59 Cal.App.4th 263.) Because the purported appeal from this order never conferred jurisdiction in this court, this portion of the appeal must be dismissed. (*Art Movers, supra,* 3 Cal.App.4th at p. 645.)

We decline appellants' alternative request to treat the notice of appeal from the nonappealable order denying appellant's request for a protective order as a second petition for extraordinary relief. Once the final judgment was entered in Rule's favor, the need for a protective order became moot.

B. Denial of Hartford's Joinder Request Is Not Appealable (case no. B256763)

Before Hartford obtained summary judgment, it noticed an appeal from the trial court's denial of its request to join Rule's successful motion for terminating sanctions (case no. B256763). Hartford's statement of appealability cited section 906, which authorizes the review of intermediate rulings upon an appeal from a final judgment. At the time Hartford noticed its appeal, a final judgment had been entered in favor of Rule, but not yet in favor of Hartford. Accordingly, section 906 did not authorize Hartford's appeal.

In response to our Government Code section 68081 letter, Hartford agreed this appeal should be dismissed. We dismiss it as having been taken from a nonappealable order. (*Art Movers, supra,* 3 Cal.App.4th at p. 645.)

II. Appellants' Jurisdictional Challenges Fail

In each appeal after the first one, appellants serially and cumulatively raise multiple challenges to the superior court's jurisdiction. Each is devoid of merit. As discussed in part VII, *post,* we conclude all reasonable attorneys would agree these challenges are "totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 (*Flaherty*).)

A. Trial Court Retained Jurisdiction After Purported Appeal from Order Denying Protective Order

Appellants maintain the purported appeal from the nonappealable order denying the request for a protective order automatically stayed all litigation in the trial court. They are incorrect. A notice of appeal from an nonappealable order does not "depriv[e] the trial court of the power to proceed further in the cause pending the purported appeal." (*Central Sav. Bank v. Lake* (1927) 201 Cal. 438, 442; see *Hearn Pacific Corp. v. Second Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117, 146 [automatic stay applies only when appeal is "'duly perfected'"].)

B. Trial Court Jurisdiction Not Lost as a Result of Appeal from the Orders of Dismissal as to Ponci and Thornhill

Appellants next contend their appeal from the Ponci and Thornhill dismissals automatically stayed all subsequent superior court proceedings as to every other party. Although this appeal was duly perfected, appellants' argument collapses under the controlling language in section 916, subdivision (a): "[With exceptions not pertinent here,] the perfecting of an appeal stays proceedings in the trial court upon the judgment or order

appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, *but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order*." (Emphasis added.) Appellants cite no relevant authority[12] and present no other argument to support their conclusion that proceedings against parties other than Ponci and Thornhill were "within the scope of the stay." (*Cunningham v. Magidow* (2013) 219 Cal.App.4th 298, 303.)

The orders of dismissal in favor of Ponci and Thornhill did not affect the proceedings against Rule; and none of the proceedings against Rule "affected the effectiveness" of appellants' appeal as to the two dismissed parties. (*In re Marriage of Horowitz* (1984) 159 Cal.App.3d 377, 381.) The trial court did not lose jurisdiction to proceed further as to every party other than Ponci and Thornhill.

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[12] Appellants' reliance on *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 is misplaced. *Varian* addressed the limited issue of "whether 'an appeal from the denial of a special motion to strike under the anti-SLAPP statute (§ 425.16) effects an automatic stay of the trial court proceedings.'" (*Id.* at p. 188.) *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 912, also fails to support appellants' position. In *Davis*, the defendants appealed from the denial of their motion to set aside a default and default judgment. Several months later, the defendants returned to the trial court with another motion to set aside the default and default judgment. The Court of Appeal held the trial court's ruling on the second motion was a nullity; the pending appeal deprived the trial court of jurisdiction to consider any issue related to the default and default judgment. (*Id.* at p. 912.)

C. Absence of Remand Order in Related Case Dismissed by CTurner Did Not Deprive Trial Court of Jurisdiction in this Action

As discussed above, litigation against the defendants began in the United States District Court, where appellants initiated a number of actions. All were dismissed without prejudice, entitling appellants to pursue the same theories in state court. Appellants initiated three such state court actions: The first was filed by CTurner (*Turner v. Hartford,* Super. Ct. Los Angeles County, 2011, No. BC463639) on June 17, 2011; the second was this lawsuit, filed by all the Turners on June 20, 2011; and the third was filed by LTurner and MTurner on December 6, 2011 (*Turner v. Hartford*, Super. Ct. Los Angeles County, 2011, No. BC474698). Rule removed only the CTurner action to federal court. The superior court subsequently determined all three actions were related. (See fn. 3, *ante*.)

Because the appellate record does not demonstrate that the entirely separate CTurner lawsuit was ever remanded back to the superior court, appellants insist the trial court had no jurisdiction to proceed with this action. Appellants cite no authority for the proposition that the federal court's failure to remand one lawsuit deprives a trial court of jurisdiction to proceed with a different action.

More to the point, though, the record establishes the argument is frivolous. CTurner voluntarily dismissed his state court action on December 6, 2011, the day the Turners filed the FAC in this lawsuit. CTurner confirmed the voluntary dismissal of his lawsuit in a separate December 6, 2011 filing, the "Report

for Non-Appearance Case Review."[13] CTurner's affirmative act of dismissing his state court action meant there was no longer a state court action the federal court could remand. Nonetheless, appellants have promoted this argument at every opportunity, without once acknowledging that CTurner's voluntary dismissal made a remand legally and practically impossible.

D. Trial Court Did Not Lose Jurisdiction Based on "Judicial Disqualification" and "Acceptance of Public Employment" Arguments

In the trial court and in their briefs here, appellants repeatedly conflate disparate concepts to urge that the superior court as a whole, and the trial judge in particular, could not exercise jurisdiction in this lawsuit. They include a truncated discussion of the benefits the County of Los Angeles provides to all superior court judges within its jurisdiction, a Los Angeles County Superior Court's policy to require civil litigants to furnish their own court reporters, the ability of retired judges to engage in post-retirement public employment, and a failure to disclose and obtain appellants' informed consent before assuming jurisdiction over them and this action.

At the reported hearing on Rule's motion for terminating sanctions, CTurner's counsel articulated the argument as follows: "[A]fter *Sturgeon I* [*Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630] was decided, it was deemed that the judges in the County of Los Angeles have public employment. And,

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[13] Having granted appellant's request for judicial notice of the superior court case summary for CTurner's lawsuit, we also take judicial notice of these two documents described therein.

therefore, under the California Constitution[,] article [VI], section 17, that means that there is a resignation of office. [¶] . . . But what SBX-211 section 5 does is it shields the judge from criminal penalties and disciplinary action based on whatever judicial benefits they have received. [¶] . . . What the Turners are challenging . . . is . . . that they need . . . disclosure and consent under [the] California Constitution[,] article [VI], section 21 because upon acceptance of public employment or office, there is a requirement to comply with the constitutional requirements."

The superior court described these arguments as "perplexing." Appellants presented the same arguments in federal court after one of their removals of this action, and the Ninth Circuit labeled them "nonsensical." (*In re Hartford Litigation Cases, supra,* 642 Fed.Appx. at p. 736). This court has not previously addressed these contentions, although appellants advanced them in two petitions for writ relief, both of which we summarily denied.[14] Addressing the contentions now, we agree with our fellow jurists.

Appellants' written arguments are indecipherable. Their effort to cobble together what are essentially "sound bites" from diverse and unrelated lawsuits, legislation, opinions by the Commission on Judicial Performance, and a number of noncitable sources (Cal. Rules of Court, rule 8.1115), fail to meld into any cogent argument. Appellants' arguments depend in large part on

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[14] See case numbers B254756 and B255209. The California Supreme Court also summarily denied review of both these petitions (case nos. S217406, S217912). The United States Supreme Court denied appellant's petition for writ of certiorari challenging the denial of the second petition (case no. 14-224).

documents the trial court and this court declined to judicially notice. Their postulations are not supported by record citations or apt authority. "We are not required to examine undeveloped claims or to supply arguments for the litigants[;] . . . it is not the court's function to serve as the appellant's backup counsel." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 (*Allen*); see also (*Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 383 ["'The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived'"] (*Sabic*).)

Having rejected appellants' jurisdictional challenges, we turn to substantive appellate issues.

III. Demurrers by Ponci and Thornhill (case no. B248667)

Here, appellants challenge the orders of dismissal after the trial court sustained without leave to amend the demurrers of Ponci and Thornhill.[15] As to these respondents, the trial court sustained demurrers without leave to amend to the following

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[15] Appellants also argue the rulings were erroneous as to Hartford, Silletto, Pierson, Gaitan, and Albrecht. The notice of appeal and case information statement under case number B248667 does not reference Hartford or the individual defendants, and this court is without jurisdiction to review any claims of error as to them. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846 [appellate jurisdiction is "'limited in scope to the notice of appeal and the judgment appealed from'"].) As noted above, the Turners' separate appeals from judgments entered in favor of the individual defendants (case no. B252461) and Hartford have been dismissed (case no. B268792).

causes of action in the FAC: (11) invasion of privacy; (12) intentional infliction of emotional distress; (13) negligent infliction of emotional distress; (17) violation of the Ralph Civil Rights Act; (18) violation of the Tom Bane Civil Rights Act; and (19) violation of the Gender Tax Repeal Act and sexual harassment. Demurrers by Ponci and Thornhill to the SAC were sustained without leave to amend to the remaining causes of action in which one or both of these respondents were named: (1) fraud; (2) negligent misrepresentation; (9) violation of Business and Professions Code section 17200 et seq.; (10) Civil Code sections 1761 and 3345 and Insurance Code section 785; (14) implied contractual indemnity and equitable indemnity; (15) violation of the Fair Employment and Housing Act (FEHA); and (16) violation of the Unruh Civil Rights Act.

Our standard of review is de novo. We exercise our independent judgment to determine whether the respective complaints state facts sufficient to constitute causes of action as to these two respondents.[16] (*Boyd v. Freeman* (2017) 18 Cal.App.5th 847, 853 (*Boyd*).) We accept as true all well-pleaded factual allegations. (*Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 101.) We do not, however, accept as true appellants' "contentions, deductions, or conclusions of fact or law." (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700.) We "must also consider judicially noticed matters." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We may affirm "'whether or not the trial court relied on proper grounds or the

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[16] De novo review does not include our determining whether appellants alleged facts sufficient to withstand demurrers by any other defendants; our only concern is whether the pleadings stated causes of action against Ponci and Thornhill.

defendant asserted a proper ground in the trial court proceedings.'" (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491.)

We review the denial of leave to amend for abuse of discretion. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 44 (*Rakestraw*).) However, if we conclude the pleadings do not state causes of action, appellants are entitled on appeal to demonstrate they can amend to cure the deficiencies. "'To meet this burden . . . on appeal, [appellants must] enumerate the facts and demonstrate how those facts establish a cause of action." (*Boyd, supra,* 18 Cal App 5th at p. 854.) "The assertion of an abstract right to amend does not satisfy this burden. [Citation.] [Appellants] must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it." (*Rakestraw,* at p. 43.)

The Turners provided a reporter's transcript for the hearing on the demurrers to the SAC. There is no reporter's transcript for the hearing on the demurrers to the FAC.

A. FAC

1. Judicial Notice

In conjunction with its demurrer to the FAC, Thornill asked the trial court to take judicial notice of eight complaints the Turners filed in state and federal courts arising out of LTurner's accident and the defendants' pre- and post-accident

conduct. The trial court did so, and the Turners challenge the ruling.[17]

There was no error. Trial courts are entitled to take judicial notice of court records of state and federal court proceedings. (Evid. Code, § 452, subd. (d).) Judicial notice means no more than that the trial court acknowledges the existence of various pleadings. (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.) Here, of course, all complaints were filed by appellants, and they do not deny the existence of the pleadings.

2. 11th Cause of Action–Invasion of Privacy

Article I, section 1 of the California Constitution guarantees a right to privacy. The elements of a cause of action for a violation of the right to privacy are: "(1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.)

In the FAC, the Turners alleged Ponci and Thornhill violated their right to privacy by initiating an investigation into LTurner's accident before she signed a "claimant designation." Ponci was alleged to have "communicat[ed] with employees of the business of MTurner's husband [i.e., CTurner] without written authorization." Thornhill representatives took photographs of LTurner and her home. The Turners alleged that after LTurner's

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[17] Rule also filed a request for judicial notice along with its demurrer. Because the Turners did not challenge the rulings on Rule's demurrers, Rule's request for judicial notice is not before us.

"life threatening and traumatic accident and CTurner . . . having medical difficulties . . . surrounding the accident of LTurner . . . defendants disregarded common decency and the standards set forth under California fair claims practice."

The trial court sustained the Ponci and Thornhill demurrers to this cause of action without leave to amend based on the federal district court's having previously dismissed the same cause of action. We are not concerned with the trial court's reasoning, however; our task is to independently review the pleading to determine whether it states facts sufficient to constitute a cause of action against Ponci and Thornhill. We have done so and conclude the 11th cause of action fails to state facts sufficient to allege a violation of the right to privacy.

LTurner sustained serious personal injuries in her home, and the accident was promptly reported to the homeowner's insurer. Under these circumstances, interviews and photographs on behalf of the insurer, without more, do not constitute an invasion of privacy. LTurner was an adult when the accident occurred, and appellants did not claim Ponci and Thornhill lacked her permission to interview and photograph her and photograph the home where she resided. Appellants did not contend Ponci or Thornhill engaged in subterfuge or misrepresentations during their investigation. The allegation that Ponci wrongfully interviewed CTurner's employees was vague and lacked factual detail. As a matter of law, the FAC failed to include any factual allegations of conduct amounting to "an unreasonably intrusive investigation" that could have given rise to liability by Ponci or Thornhill. (*Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654, 660.)

Without a reporter's transcript of the hearing on the demurrers to the FAC, we have no way to determine whether appellants asked the trial court for leave to amend and, if so, whether the trial court abused its discretion in denying the request. (*Rakestraw, supra,* 81 Cal.App.4th at p. 44.) Appellants nonetheless may demonstrate for the first time on appeal that the complaint can be amended to state a cause of action against Ponci and Thornhill. (*Id.* at p. 43.) To do so, they must identify facts that may be alleged and explain how those facts would establish a cause of action for violation of the right to privacy. (*Boyd, supra,* 18 Cal.App.4th at p. 854.) Appellants do not meet this burden. The demurrer to this cause of action was properly sustained without leave to amend.

3. 12th Cause of Action–Intentional Infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050, internal quotation marks omitted.)

Allegations to support this theory of liability against Ponci and Thornill were incorporated by reference from those in earlier causes of action. No new allegations were specifically directed to either respondent. Instead, appellants alleged "Defendants engaged in outrageous conduct. Such conduct was continuous, extreme, intentional, and outrageous and said conduct was done

for the purpose of causing [appellants] to suffer humiliation, overwhelming grief, mental anguish and emotional distress and was done with wanton and reckless disregard of the probability of causing such distress."

For the reasons discussed above concerning the cause of action for invasion of the right to privacy, the incorporated allegations were also insufficient to state a cause of action for intentional infliction of emotional distress. The new charging allegations were conclusory and in the nature of argument. They did not include well-pleaded facts, and we do not accept them as true. As above, appellants have not met their burden to demonstrate on appeal that they can amend to state a cause of action for intentional infliction of emotional distress.

4. 13th Cause of Action–Negligent Infliction of Emotional Distress

Negligent infliction of emotional distress is not an independent tort. (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588.) In certain circumstances, though, a plaintiff without physical injury or economic losses may sue under traditional negligence theories and seek damages from a defendant whose negligence was a substantial factor in causing severe or serious emotional distress. "'The traditional elements of duty, breach of duty, causation, and damages apply. [¶] Whether a defendant owes a duty of care is a question of law.'" (*Ibid.*)

Had conduct by either Ponci or Thornhill caused physical injury or economic damages, their duty of care to each of the Turners would be presumed. (Civ. Code, § 1714.) In the absence of physical injury or property damage, a duty from a defendant to

a plaintiff may arise where the parties have a preexisting relationship. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1074.) None of the Turners had a preexisting relationship with Ponci or Thornhill. These defendants did not owe appellants a duty of care.

An absence of duty notwithstanding, the allegations were insufficient as a matter of law to support a cause of action for severe or serious emotional distress. "'[S]evere' means substantial or enduring as distinguished from trivial or transitory. Severe emotional distress means, then, emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it. [¶] 'It is for the court to determine whether on the evidence severe emotional distress can be found.'" (*Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397.)

Appellants again incorporated language from earlier causes of action and alleged all defendants–without specifically calling out Ponci or Thornhill–"engaged in conduct which caused [appellants] to suffer serious emotional distress." The allegations were conclusory and insufficient as a matter of law. Appellants have not proposed how they could amend to state a cause of action for negligence that proximately caused serious emotional distress.

5. 17th and 18th Causes of Action–Violations of the Ralph Civil Rights Act of 1976 and Tom Bane Civil Rights Act

We consider these two causes of action together. The 17th is based on the Ralph Civil Rights Act of 1976 (Civ. Code, § 51.7), which provides in relevant part, "All persons within the

jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property . . . on account of any characteristic listed or defined in [the Unruh Civil Rights Act,]" including sex, race, color, and ancestry. (Civ. Code, § 51.7, subd. (b).) Any person who denies the rights provided by the Ralph Civil Rights Act of 1976 may be civilly liable for penalties, general and punitive damages, and attorney fees. (Civ. Code, § 52.)

The Tom Bane Civil Rights Act is codified in Civil Code section 52.1. It authorizes suits by individuals "whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with [by threat, intimidation, or coercion]." (Civ. Code, § 52.1, subd. (c).) "Speech alone" cannot be a basis for a lawsuit under the Tom Bane Civil Rights Act unless "the speech itself threatens violence . . . ; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat." (Civ. Code, § 52.1, subd. (k).)

Violence and threats of violence are the sine qua nons for causes of action under either Act. In this regard, although the FAC complained of more than 20 years of discriminatory conduct, which began long before Hartford issued its policy, it was bereft of any facts suggesting violence. The FAC concluded that appellants "were intimidated, bullied, and terrorized and deprive[d] of basic information including the actual policy of insurance and . . . concealment of the actual denial of the claim submitted by LTurner (as a method of discrimination and process

to allow further intimidation and threats of violence to property (i.e., thorough deprivation of essential element (insurance) to maintain ownership of property)." Appellants also alleged they "reasonably believed there was violence against their property and property right [*sic*] would occur and did occur." These contentions were insufficient to state causes of action under either the Ralph or Tom Bane Civil Rights Acts.

Appellants stood on their pleadings in the trial court. They maintained allegations that respondents, by contesting coverage for LTurner's accident, deprived them "of an essential element (insurance) to maintain ownership of property" and this conduct was sufficient to constitute violence. Appellants' written opposition to the demurrers included a boilerplate request for leave to amend, but failed to recite any facts to support these legal theories.

On appeal, appellants' contention that the trial court abused its discretion by failing to give them an opportunity to amend is not cognizable, as we have no reporter's transcript of the hearing on the demurrers. Appellants' request in their opening brief for leave to amend is also boilerplate and insufficient. Appellant have not asserted specific factual allegations that they could add to be able to state causes of action under either Act.

6. 19th Cause of Action – Gender Tax Repeal Act and Sexual Harassment

MTurner alone was the plaintiff in this cause of action.[18] Civil Code section 51.6 prohibits business establishments from

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[18] As mentioned, MTurner previously "assigned all rights and interest in [her] claims and causes of action of any possible

discriminating, "with respect to the price charged for services of similar or like kind, against a person because of the person's gender." Civil Code section 51.9 imposes liability on a defendant who is in "a business, service, or professional relationship" with a plaintiff and "has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe." (Civ. Code, § 51.9, subd. (a)(1), (2).)

No allegations were made against Ponci individually. MTurner alleged generally that she was overcharged for insurance coverage and not treated "as an insured and person in her own right[, but was treated] as an appendage of her husband." She alleged the same conduct constituted "unlawful sexual harassment." The allegations were conclusory and fact-deficient. They did not state a cause of action against Ponci under either legal theory. Once again, although appellants made a boilerplate request for leave to amend, they did not meet their burden to provide this court with specific facts and the substantial law that entitle them leave to amend. (*Rakestraw, supra,* 81 Cal.App.4th at p. 43.)

B. SAC

Appellants' appendix does not include a redlined version of the SAC. As part of our independent review, we compared the allegations between the FAC and SAC.

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nature, past and future, against [Ponci] that are transferable by law to LTurner." She does not address this point on appeal.

1. First Cause of Action – Fraud

"The elements of fraud that will give rise to a tort action for deceit are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974, most internal quotation marks omitted.) Fraud allegations must be specific. General or conclusory allegations that fail to allege the "who, what, where, and how" particulars are insufficient. (*Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1262.)

Most of the fraud allegations predated Hartford's initial coverage and LTurner's accident and were directed at defendants other than Ponci or Thornhill. As to these respondents, appellants alleged Ponci was told, but failed to advise them, of irregularities in the pricing for the Hartford homeowner's coverage. Thornhill sent a representative to LTurner's home to interview and photograph her after the accident, even though the claim was submitted by Grace Farrell. Ponci denied coverage based on Farrell's claim rather than a claim initiated by LTurner.

Although the Turners sued these respondents for fraud, they did not allege any facts to support the theory that either Ponci or Thornhill intended to harm them or to induce detrimental reliance. They did not allege they in fact relied to their detriment on any conduct by these respondents.

The allegations were insufficient to support a cause of action for fraud against Ponci or Thornhill. Appellants have not suggested how this cause of action might be amended to withstand demurrers by these two respondents.

2. Second Cause of Action – Negligent Misrepresentation

The elements of a cause of action for negligent misrepresentation are akin to those for fraud, but without the "scienter or an intent to defraud." (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 845.) A negligent misrepresentation cause of action does require that the defendant intend for the plaintiff to rely on the misrepresentation and that the plaintiff in fact did so. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 196.) As noted in the previous discussion, these allegations were lacking. Appellants have not suggested that any facts exist to support a cause of action for negligent misrepresentation against Ponci or Thornhill.

3. Ninth Cause of Action – Violation of the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.)

The UCL creates an independent, cumulative remedy against parties that engage in unfair competition. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 179.) UCL claims may be based on violations of "[v]irtually any law–federal, state or local." (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1335, internal quotation marks omitted.) A successful UCL plaintiff

may be awarded injunctive relief and restitution, but not damages or attorney fees.[19] (*Ibid*.)

The SAC includes a list of Insurance Code and California Code of Regulations provisions that Ponci and Thornhill allegedly violated. Rather than plead facts to support allegations that these statutes and regulations were violated, appellants merely concluded respondents engaged in discriminatory practices and unfair claims settlement practices, made unlawful referrals, conducted pretextual interviews, obtained information without proper authorization, and failed to provide pertinent policy information. The allegations are insufficient. (*Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1554 [a "laundry list" of statutes without pleading facts to support their violation by a defendant cannot withstand demurrer].) Appellants have not suggested any facts that would support a UCL cause of action.

4. 10th Cause of Action – Treble Damages

Appellants linked this cause of action to the UCL. Relying on Insurance Code section 785, which states that insurers owe prospective insureds who are "65 years of age or older, a duty of honesty, good faith, and fair dealing," and Civil Code section 3345, they seek to treble the amount of any monetary award they receive under the UCL claim. This cause of action fails.

Setting aside for a moment that LTurner does not claim to be a senior citizen and there are no allegations against Ponci or Thornhill based on appellants' status as prospective insureds,

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[19] Attorney fees may be awarded to a plaintiff acting as a private attorney general. (*Zhang v Superior Court* (2013) 57 Cal.4th 364, 371, fn. 4.)

Civil Code section 3345 authorizes a treble recovery only for plaintiffs who are awarded "a remedy that is in the nature of a penalty." (*Clark v. Superior Court* (2010) 50 Cal.4th 605, 614.) The restitution to which a private individual suing under the UCL may be entitled "is not a penalty and hence does not fall within the trebled recovery provision of Civil Code section 3345, subdivision (b)." (*Id.* at p. 615.)

In any event, because Civil Code section 3345 "constitutes a remedy [, it] is not itself a cause of action." (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 433, fn. omitted.)

5. 14th Cause of Action – Implied Contractual Indemnity and Equitable Indemnity

Ponci was not named in this cause of action. The gist of the 14th cause of action against Thornhill was that if MTurner and CTurner were liable to LTurner for her personal injuries, "Thornhill should provide implied contractual indemnity or in the alternative equitable indemnity" to them based on Thornhill's "unreasonable and authorized [*sic*] and intrusive investigation." In other words, appellants attempted to merge disparate tort and contract concepts. On one hand, they alleged MTurner and CTurner were joint, concurrent, or successive tortfeasors with Thornhill in causing LTurner's losses. On the other, they sought to hold Thornhill liable on the theory that Thornhill breached an implied contractual duty to them. (*West v. Superior Court* (1994) 27 Cal.App.4th 1625, 1633 ["'An action for implied contractual indemnity is not a claim for contribution from a joint tortfeasor; it is not founded upon a tort or upon any duty which the indemnitor

owes to the injured third party. It is grounded upon the indemnitor's breach of duty *owing to the indemnitee* to properly perform its contractual duties"'].) Appellants cite no apt authority for either the tort or contract theory. They forfeited this issue. (*Sabic, supra,* 14 Cal.App.5th at p. 383.)

6. 15th and 16th Causes of Action – Violation of Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.) and Unruh Civil Rights Act (Civ. Code, § 51)

These causes of action incorporated a number of earlier allegations. Otherwise, Ponci was not mentioned in either the 15th or 16th causes of action. As for Thornhill, the SAC reiterated the conclusory statement that it "conduct[ed] an intrusive and discriminatory investigation without a claimant designation from LTurner." The incorporated and new allegations are not sufficient to state causes of action against Ponci or Thornhill under either civil right.

Appellants' opening brief eschewed a discussion of any facts that would support suing these respondents and instead cited several appellate decisions without an attempt to explain their relevancy to these respondents. Appellants simply asserted that Hartford engaged in "a long and continuous pattern of discrimination." This issue, too, has been forfeited. (*Sabic, supra,* 14 Cal.App.5th at p. 383.)

IV. Appeal from the Order Assessing Monetary Discovery Sanctions (case no. B250084)

As mentioned, on June 17, 2013, the trial court granted most of Rule's discovery motions. It determined appellants'

responses to the discovery were timely, so their objections were not waived. Noting the objections were of the "general boilerplate" variety and appellants "failed to submit a responsive Separate Statement justifying the objections asserted against each discovery request," the trial court overruled them. Finding no substantial justification for appellants' objections, the trial court assessed monetary sanctions of $6,304.31, jointly and severally, against appellants and their attorneys. Appellants did not post an undertaking. (§ 917.1, subd. (a)(1).)

We review the sanctions award itself for abuse of discretion. Factual findings that support the award are evaluated under the substantial evidence standard. (*Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1177.)

Appellants contest Rule's entitlement to sanctions, but do not challenge the amount of the award. Appellants contend the trial court could not impose monetary sanctions unless it found they "acted without substantial justification." That is not the legal standard. Section 2023.030, subdivision (a) *requires* a trial court to impose a monetary sanction "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Appellants, on the losing end of the discovery dispute, had the burden to prove they acted with substantial justification. (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1435.)

Appellants did not meet this burden; and on this record, we find no abuse of discretion. Appellants provide no citations to the record concerning the discovery propounded by Rule or their

objections to it.[20] Instead, they merely state the "actual objections . . . were provided to the [trial] court and they properly filed a motion for protective order that was directly related to the inability to file separate statements for discovery that exceeded 2,500 items." Again, we do not comb the record to find factual support for appellants' claims. (*Harshad & Nasir Corp. v. Global Sign Systems, Inc.* (2017) 14 Cal.App.5th 523, 527, fn. 3.)

Appellants conclude they "met and conferred in good faith, reasonably sought a protective order, were clearly engaged in trial proceedings, and as indicated above, the discovery was drastically burdensome and overbroad." The trial court found "[t]he parties complied with the good faith meet and confer requirements," but that alone did not satisfy appellants' burden to demonstrate they acted with substantial justification. The trial court also found appellants' multiple requests for a protective order were not reasonable and noted the weak rationale proffered by appellants for not having time to respond to discovery–their engagement "in trial proceedings" referred to LTurner's separate personal injury action against her own father. The trial court overruled appellants' objections based on burden and overbreadth. Appellants failed to demonstrate they acted with substantial justification or that other circumstances existed that would make the imposition of sanctions unjust.

The record amply supports the trial court's predicate findings for an award of monetary sanctions. The trial court did not abuse its discretion in assessing monetary sanctions of $6,304.31, jointly and severally, against appellants and their attorneys.

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[20] Appellants only provide a block citation of almost 400 pages concerning their responses to discovery propounded by Thornhill.

V. Terminating Sanctions (case no. B256763)

Disobedience of a discovery order constitutes an abuse of discovery (§ 2023.010, subd. (g)) and authorizes a trial court to impose one or more sanctions on the offending parties, including dismissal of the action (§ 2023.030, subd. (d)(3).) As this court previously has held, the "'decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.'" (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390 (*Los Defensores, Inc.*).) Willful disobedience of even one discovery order may be sufficient to impose terminating sanctions. (*Ibid.*) The trial court is entitled to consider "the totality of the circumstances [, including the disobeying party's conduct] to determine if the actions were willful." (*Ibid.*)

The abuse of discretion standard of review applies when an action is dismissed as a terminating sanction. (*Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 702.) We "reverse only if the trial court's order was arbitrary, capricious, or whimsical." (*Ibid.*) Moreover, "The question before us "'is not whether the trial court should have imposed a lesser sanction; rather, the question is whether the trial court abused its discretion by imposing the sanction it chose.'"" (*Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1105.) Where the trial court has exercised "its discretion [based] on factual determinations, we examine the record for substantial

evidence to support them." (*Los Defensores, Inc., supra,* 223 Cal. App. 4th at p. 390.)

In the trial court, appellants' written opposition to Rule's motion for terminating sanctions was filed late and exceeded the allowable page limits. Appellants did not ask for an extension of time to file their points and authorities or for permission to file a longer memorandum. (Cal. Rules of Court, rule 3.1113(e).) The trial court exercised its discretion and accepted the late opposition, but considered only the first 15 pages. That treatment is expressly authorized by rule 3.1113(g), and the trial court's decision to proceed in this manner is properly reflected in its order. (Cal. Rules of Court, rule 3.1300(d).)

Appellants indicated on the caption page that their opposition was filed "under protest." The first 15 pages of the opposition ignored the merits of Rule's motion. Appellants did not challenge the sufficiency of the evidence to support a finding of willful disobedience, nor did they attempt to demonstrate their disobedience was inadvertent or other than willful. Instead, appellants reprised the familiar and consistently discredited jurisdictional complaints.

Despite a tentative ruling in Rule's favor, appellants did not address the willfulness vel non of their disobedience. The hearing was reported. Appellants' counsel first asked the trial court to dismiss the lawsuit without prejudice so they could refile in federal court.[21] Thereafter, appellants' counsel continued to press the jurisdictional claims.

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[21] Appellants have never offered an explanation or rationale for seeking to proceed in the federal district court. Nor have appellants explained why they did not voluntarily dismiss this action without prejudice.

The trial court took the matter under submission and issued a comprehensive written decision. The trial court addressed and rejected appellants' jurisdictional challenges and recounted much of the history of the lawsuit, including appellants' repeated attempts to evade their discovery obligations by removing the case to federal court and seeking to disqualify the trial judge. Based on the totality of the circumstances and the undisputed evidence of appellant's willful disobedience, the trial court granted the motion and dismissed the action as to Rule as a sanction for disobedience of its earlier discovery orders.

Appellants, having not contested the merits of the motion for terminating sanctions in the trial court, largely eschew them in this court as well. The entirety of their argument on the merits is that "Rule did not establish that [appellants] had misused the discovery process or that they had willfully refused to comply with a court order." Appellants include no citations to the record or any applicable authorities to support this conclusion. As in the trial court, appellants rely on their unsupported jurisdictional arguments.

We have already addressed appellants' jurisdictional claims in part II of the Discussion, *ante*. Appellants offered no additional arguments that this court could consider.[22] The trial court acted well within its discretion when it imposed

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[22] Appellants contend the trial court abused its discretion when it denied their oral request at the hearing to "dismiss this case without prejudice so that it can be filed in what we believe to be the proper jurisdiction [i.e., federal district court]." Appellants also complain the trial court failed to sanction Rule pursuant to section 128.7, subdivision (c), for filing a frivolous motion for terminating sanctions. Appellants never sought such sanctions in the trial court.

terminating sanctions as to Rule. (*Los Defensores, Inc., supra,* 223 Cal. App. 4th at p. 390.)

VI. Prevailing Party Costs to Rule (case no. B261032)

As the prevailing party, Rule sought and was awarded $8,171.55 in costs. Appellants contest the denial of their motion to strike and/or tax Rule's costs. Whether Rule is a prevailing party, which appellants dispute, presents a question of law we review de novo. (*Charton v. Harkey* (2016) 247 Cal.App.4th 730, 739 (*Charton*).) The award itself we review for abuse of discretion. (*Ibid.*)

As a matter of law, Rule was the prevailing party and entitled to costs "'as a matter of right.'" (*Charton, supra*, 247 Cal.App.4th at p. 737 ["a defendant in whose favor a dismissal is entered" is the prevailing party]; § 1032, subd. (a)(4).)

Determining the amount of costs to award the prevailing party typically involves a straightforward process. Section 1033.5 identifies the categories of costs that may be awarded to a prevailing party (subd. (a)), lists items that generally are not allowable as costs (subd. (b)), and provides that "[i]tems not mentioned in this section . . . may be allowed or denied in the court's discretion" (subd. (c)(4)). For costs expressly allowed pursuant to section 1033.5, the objecting party bears the burden to show they were unnecessary or unreasonable. For costs not expressly allowed, the prevailing party claiming them has the burden to show they were reasonably necessary. (*Berkeley Cement, Inc. v. Regents of University of California* (2019) 30 Cal.App.5th 1133, 1139.)

A prevailing party claims costs by filing a memorandum of costs "verified by a statement of the party, attorney, or agent that

to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case." (Cal. Rules of Court, rule 3.1700(a)(1).) An optional Judicial Council form and worksheet have been developed for this purpose. Rule completed both forms.

Rule 3.1700(b)(2) of the California Rules of Court prescribes the required format for a motion to strike or tax costs: "Unless objection is made to the entire cost memorandum, the motion to strike or tax costs must refer to each item objected to by the same number and appear in the same order as the corresponding cost item claimed on the memorandum of costs and must state why the item is objectionable."

Appellants did object to the entire cost memorandum on the same jurisdictional grounds they had been raising for several years. The format of appellants' motion was proper for that purpose; as already discussed, the trial court appropriately rejected the jurisdictional arguments.

Alternatively, appellants attempted to object to specific items in the memorandum of costs. Appellants' motion, however, was procedurally defective and not in the requisite format for challenges to specific cost items. (Cal. Rules of Court, rule 3.1700(a)(2).) The procedural deficiencies provided sufficient justification for denial of the motion. Given the broad discretion enjoyed by trial courts, there was "no abuse of discretion [because] there exist[ed] a reasonable . . . justification under the law for the trial court's decision[, which fell] within the permissible range of options set by the applicable legal criteria." (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.)

VII. Sanctions for a Frivolous Appeal (case no. B256763)

A. Governing Principles and Background

Section 907 and rule 8.276(a)(1) of the California Rules of authorize sanctions for an appeal that is frivolous, i.e., one that "is prosecuted for an improper motive–to harass the respondent or delay the effect of an adverse judgment–or when it indisputably has no merit–when any reasonable attorney would agree that the appeal is totally and completely without merit." (*Flaherty, supra,* 31 Cal.3d at p. 650.) A "total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay." (*Id.* at p. 649.) "An unsuccessful appeal should not be penalized as frivolous if it presents a unique issue which is not indisputably without merit . . . involves facts which are not 'amenable to easy analysis in terms of existing law . . . or makes a reasoned argument for the extension, modification, or reversal of existing law. [Citation.]'" (*Workman v. Colichman* (2019) 33 Cal.App.5th 1039, 1062, internal quotation marks omitted (*Workman*).)

Our analysis requires that we apply "'both subjective and objective standards. The subjective standard looks to the motives of the appealing party and his or her attorney, while the objective standard looks at the merits of the appeal from a reasonable person's perspective. [Citation.] Whether the party or attorney acted in an honest belief there were grounds for appeal makes no difference if any reasonable person would agree the grounds for appeal were totally and completely devoid of merit.'" (*Workman, supra,* 33 Cal.App.5th at p. 1062.) Sanctions for a frivolous appeal may be ordered against the litigants and/or the attorneys. (*Id.* at p. 1065.) "Sanctions are warranted against a lawyer 'who,

because the appeal was so totally lacking in merit, had a professional obligation not to pursue it.'" (*Ibid.*)

Within this framework, Rule asserts the appeal from the judgment in its favor (case no. B256763) is frivolous and warrants sanctions. Rule asks this court to assess $21,366 in sanctions jointly and severally against appellants and their counsel, Nina Ringgold and Amy Lee. This sum represents the attorney fees it incurred to prepare the respondent's brief in this one appeal, the motion for attorney fees, and the request for judicial notice, as well as the attorney fees it anticipates incurring to file a reply and argue the motion.

We gave appellants written notice that we were considering the imposition of sanctions and the opportunity to submit written opposition. (Cal. Rules of Court, rule 8.276(c), (d).) Appellants have done so.

Appellants' opposition primarily consists of a reiteration of their jurisdictional claims. They argue (1) "Court users have a right to receive disclosure that a person assigned to their case is a judge subject to mandatory constitutional resignation . . ."; (2) "Recusal was required in the trial court and is required in the appellate court under the due process clause of the United States [Constitution] and Decisions of the United States Supreme Court" (internal capitalization omitted); and (3) Rule's motion for sanctions is frivolous because the federal district court never remanded the CTurner lawsuit, and this court should sanction Rule instead of appellants. Alternatively, appellants contend Rule is overreaching and its request for sanctions in the sum of $21,366 is too high.

At our invitation, Rule served and filed a reply. Although given the opportunity to do so (Cal. Rules of Court, rule 8.276(e)), counsel did not address the sanctions issue during oral argument.

B. Analysis

We agree the appeal in case number B256763 is frivolous and warrants sanctions against counsel for appellants, payable to Rule in the sum of $21,366, and to the clerk of this court in the amount of $8,500. A decade ago, a cost analysis by the clerk's office of the Second Appellate District estimated the cost to taxpayers to process an appeal through opinion was "approximately $8,500." (*In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 520.) We find additional sanctions in the amount of $8,500 to be appropriate. (*Workman, supra,* 33 Cal.App.5th at pp. 1064-1065.)

Appellants chose to pursue legal remedies against Rule in the judicial system. So long as all three Turners were plaintiffs seeking damages under California law against Rule, a California corporation, this lawsuit could proceed only in a California state court. Although appellants were free to voluntarily dismiss this lawsuit against Rule at any time before trial, they did not. (§ 581, subd. (b)(1).) When appellants failed to respond to discovery, the trial court issued an order compelling appellants to respond to formal civil discovery and imposed monetary sanctions. Appellants disobeyed the discovery orders and never challenged the evidence in support of the finding that the disobedience was willful. The record is replete with instances where appellants not only evaded their discovery responsibilities, but actively sought to delay proceedings, divert attention from

the issues embraced by the pleadings, and dramatically increase the cost of the litigation.

Rule's motion for terminating sanctions was heard approximately eight months after it was filed. Appellants had no merits-based opposition. Instead they relied on the jurisdictional claims they have never supported with any applicable legal authority. When Rule's motion for terminating sanctions was granted and judgment was entered in its favor, appellants appealed, relying on the same meritless and unsupported jurisdictional claims. When this court advised it was considering the imposition of sanctions for a frivolous appeal, appellants' counsel still relied only on the frivolous jurisdictional claims. Objectively, no reasonable attorney would pursue this appeal based solely on jurisdictional claims that are totally devoid of merit. (*Flaherty, supra,* 31 Cal.3d at p. 650.) Under these circumstances, the objective standard overrides any honest belief by counsel that grounds existed for this appeal. (*Workman, supra,* 33 Cal.App.5th at p. 1062.)

DISPOSITION

The Turners' purported appeals from the orders compelling discovery and denying their request for a protective order are dismissed as having been taken from nonappealable orders. Hartford's notice of appeal from the order denying its request for joinder in Rule's motion for terminating sanctions is dismissed as nonappealable. In all other respects, the judgments and orders are affirmed.

Sanctions for a frivolous appeal in case no. B256763 are imposed upon appellants' counsel of record, the Law Offices of Nina R. Ringgold and Nina R. Ringgold, and the Law Office of Amy P. Lee and Amy P. Lee, jointly and severally, in the amount

of $21,366, payable to Rule, and in the separate amount of $8,500, are payable to the clerk of this court. Appellants' counsel of record and the clerk of this court are each ordered to forward a copy of this opinion to the State Bar upon return of the remittitur. (Bus. & Prof. Code, §§ 6086.7, subd. (a)(3), 6068, subd. (o)(3).) All sanctions shall be paid no later than 15 days after the date the remittitur is filed.

In the interests of justice, as between appellants and Hartford, the parties are to bear their own costs on appeal. Rule, Ponci, and Thornhill are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DUNNING, J.*

WE CONCUR:

MANELLA, P. J.

CURREY, J.

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* Retired judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.